

AMENDED IN ASSEMBLY AUGUST 30, 2013

AMENDED IN ASSEMBLY JULY 3, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN ASSEMBLY JUNE 18, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 9, 2013

AMENDED IN SENATE APRIL 1, 2013

## **SENATE BILL**

**No. 620**

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**Introduced by Senator Wright**

February 22, 2013

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An act to amend Sections 60290, 60336, and 60339 of, and to add and repeal Section 60233 of, the Water Code, relating to water.

### LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Wright. Water replenishment districts.

(1) Existing law, the Water Replenishment District Act, provides for the formation of water replenishment districts and grants authority to a water replenishment district relating to the replenishment, protection, and preservation of groundwater supplies within that district. The act generally authorizes a water replenishment district to establish an annual reserve fund in an amount not to exceed \$10,000,000 commencing with the 2000–01 fiscal year, and thereafter, as that amount is adjusted annually. The act requires a minimum of 80% of the reserve fund to be expended for water purchases.

This bill, until the 2019–20 fiscal year, would eliminate the requirement that a minimum of 80% of the reserve fund be expended

for water purchases. The bill would declare the intent of the Legislature to provide the Water Replenishment District of Southern California with the ability to determine the appropriate use of moneys held in its annual reserve fund, and that public records shall help the Legislature determine whether the flexibility provided by this act should be permanently extended beyond the 2019–20 fiscal year.

This bill would require a water replenishment district to establish a budget advisory committee, as prescribed, for purposes of reviewing a replenishment assessment and a district's annual operating budget, as specified, thereby imposing a state-mandated local program. The bill would require a water replenishment district to consult with the budget advisory committee, as specified, and to maintain records regarding the recommendations of the budget advisory committee and the final decisions made by the board of the water replenishment district with regard to those recommendations. These provisions would become inoperative on June 30, 2019, and would be repealed on January 1, 2020.

(2) The act provides that any operator of a water-producing facility that knowingly fails to register his or her water-producing facility or knowingly fails to file a groundwater production statement, or any other reports or statements required, as specified, in addition to interest due, as prescribed, is liable to the district for a penalty of \$150.

This bill would provide that the operator is liable to the district for a penalty of \$1,000. The bill would delay the application of the increase in the amount of that penalty to an operator of a water-producing facility that is a party to certain litigation involving a water replenishment district until after the litigation is settled or all legal remedies have been exhausted.

(3) The act authorizes the superior court of the county in which the major portion of the district lies to issue a temporary restraining order upon the filing by the district with the court of a verified petition or complaint setting forth that the defendant is the operator of a water-producing facility that has not been registered with the district or that the defendant is delinquent in the payment of a replenishment assessment, as specified.

This bill would require the court to direct that the ~~party prevailing on any motion, as prescribed, district~~ be awarded the reasonable attorney's fees and costs of making or opposing the motion ~~unless the court finds that the party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust~~

*seeking injunctive relief under these provisions whenever the district prevails on a petition or complaint.* The bill would also delay the application of those provisions to an operator of a water-producing facility that is a party to the above-described litigation, as specified above.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 60233 is added to the Water Code, to  
2 read:  
3 60233. (a) A district shall establish a budget advisory  
4 committee for purposes of reviewing a replenishment assessment,  
5 if any is proposed, and a district's annual operating budget,  
6 including reserve funds maintained by the district.  
7 (b) (1) The committee shall consist of seven members who  
8 shall serve a two-year term and who shall be elected from among  
9 representatives of producers who are owners or operators of  
10 groundwater producing facilities who are subject to the  
11 replenishment assessment pursuant to Section 60317. The  
12 membership of the committee shall be composed as follows:  
13 (A) Two members shall be elected by vote of entities with an  
14 annual pumping allocation of less than 5,000 acre-feet.  
15 (B) Two members shall be elected by vote of entities with an  
16 annual pumping allocation of at least 5,000 acre-feet but less than  
17 10,000 acre-feet.  
18 (C) Three members shall be elected by vote of entities with an  
19 annual pumping allocation of 10,000 acre-feet or greater.  
20 (2) On or before the first Tuesday in January on a biennial basis,  
21 the district shall provide by first-class mail to each producer notice  
22 that includes information regarding the purpose of the committee,  
23 the categories that determine membership on the committee as

1 described in paragraph (1), the schedule for the election of  
2 members, and any additional information the district determines  
3 necessary. The notice shall include the deadline for each producer  
4 to inform the district that it would like to serve on the committee  
5 and the category, as described in subparagraph (A) to (C), inclusive,  
6 of paragraph (1), for which it is eligible to serve. An eligible  
7 producer that would like to serve on the committee and informs  
8 the district shall be included on the election ballot.

9 (3) The election of committee members shall be conducted by  
10 mail ballot not later than 90 days before the second Tuesday in  
11 May. Producers shall be invited to witness the counting of ballots.  
12 Each producer shall have the right to cast a total number of votes  
13 equal to the number of acre-feet of its annual pumping allocation,  
14 rounded to the next highest whole number, multiplied by the  
15 number of members that may be elected for that production  
16 category, as specified in subparagraphs (A) to (C), inclusive, of  
17 paragraph (1). Votes may only be cast by the members in their  
18 respective production categories for the seats in that category, as  
19 specified in subparagraphs (A) to (C), inclusive, of paragraph (1).  
20 The members of the committee shall be those candidates receiving  
21 the highest vote total in their respective categories. The committee  
22 shall select a winner in the event that there is a tie in the vote tally.  
23 The results of the election shall be reported on the Internet Web  
24 site of the district.

25 (4) The committee shall hold its first meeting within 30 days  
26 of the date the results of the election are announced by the district.  
27 The committee shall develop rules for its operation. The committee  
28 shall take action by majority vote of its members. Members of the  
29 committee shall serve without compensation.

30 (c) No later than the second Tuesday of April of each year, a  
31 district shall consult with the budget advisory committee for the  
32 purposes set forth in subdivision (a). The committee shall make  
33 recommendations to the board at least 10 days prior to the hearing  
34 held pursuant to Section 60306. Committee recommendations shall  
35 be included in the documents comprising the agenda packet for  
36 that meeting.

37 (d) A district shall maintain records regarding the  
38 recommendations of the budget advisory committee and the final  
39 decisions made by the board with regard to those recommendations.

1 (e) This section shall become inoperative on June 30, 2019, and,  
2 as of January 1, 2020, is repealed, unless a later enacted statute,  
3 that becomes operative on or before January 1, 2020, deletes or  
4 extends the dates on which it becomes inoperative and is repealed.

5 SEC. 2. Section 60290 of the Water Code is amended to read:

6 60290. The district may establish an annual reserve fund in an  
7 amount not to exceed ten million dollars (\$10,000,000)  
8 commencing with the 2000–01 fiscal year. The maximum  
9 allowable reserve fund may be adjusted annually commencing  
10 with the 2001–02 fiscal year to reflect percentage increases or  
11 decreases in the blended cost of water from district supply sources.  
12 Beginning in the 2019–20 fiscal year, a minimum of 80 percent  
13 of the reserve shall be for water purchases.

14 SEC. 3. Section 60336 of the Water Code is amended to read:

15 60336. (a) Should any operator of a water-producing facility  
16 knowingly fail to register his or her water-producing facility or  
17 knowingly fail to file the groundwater production statement, or  
18 knowingly fail to file and furnish any other reports or statements  
19 required by resolution of the board adopted pursuant to Section  
20 60326, the operator shall, in addition to interest as provided in  
21 Section 60335, become liable to the district for a penalty of one  
22 thousand dollars (\$1,000).

23 (b) The changes made to this section by the act adding this  
24 subdivision shall not apply to any operator of a water-producing  
25 facility that is a party to litigation involving a water replenishment  
26 district filed before July 1, 2013, until after the litigation is settled  
27 or all legal remedies have been exhausted.

28 SEC. 4. Section 60339 of the Water Code is amended to read:

29 60339. (a) The superior court of the county in which the major  
30 portion of the district lies may issue a temporary restraining order  
31 upon the filing by the district with the court of a verified petition  
32 or complaint setting forth that the person named therein as  
33 defendant is the operator of a water-producing facility which has  
34 not been registered with the district or that the defendant is  
35 delinquent in the payment of a replenishment assessment. The  
36 temporary restraining order shall be returnable to the court on or  
37 before 10 days after its issuance.

38 (b) The court may issue and grant an injunction restraining and  
39 prohibiting the named defendant from the operation of any  
40 water-producing facility when it is established by the

1 preponderance of the evidence at a hearing that the defendant has  
2 failed to register the water-producing facility with the district or  
3 that the defendant is delinquent in the payment of a replenishment  
4 assessment. The court may provide that the injunction so made  
5 and issued shall be stayed for a period not to exceed 10 days to  
6 permit the defendant to register the water-producing facility or to  
7 pay the delinquent replenishment assessment.

8 (c) Service of process shall be made by posting a copy of the  
9 summons and complaint upon the water-producing facility or the  
10 parcel of land upon which the water-producing facility is located  
11 and by personal service of summons and complaint upon the named  
12 defendant.

13 (d) The right to proceed for injunctive relief as provided in this  
14 section shall be in addition to any other right which may be  
15 provided elsewhere in this act or which may be otherwise allowed  
16 by law. The procedure provided in Chapter 3 (commencing with  
17 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure  
18 regarding injunctions shall be followed except insofar as it may  
19 be otherwise provided in this section.

20 ~~(e) The court shall direct that the party prevailing on any motion~~  
21 ~~under this section be awarded the reasonable attorney's fees and~~  
22 ~~costs of making or opposing the motion unless the court finds that~~  
23 ~~the other party acted with substantial justification or that other~~  
24 ~~circumstances make the imposition of attorney's fees and costs~~  
25 ~~unjust.~~

26 *(e) The court shall direct that the district be awarded the*  
27 *reasonable attorney's fees and costs of seeking injunctive relief*  
28 *under this section whenever the district prevails on a petition or*  
29 *complaint.*

30 (f) The changes made to this section by the act adding this  
31 subdivision shall not apply to any operator of a water-producing  
32 facility that is a party to litigation involving a water replenishment  
33 district filed before July 1, 2013, until after the litigation is settled  
34 or all legal remedies have been exhausted.

35 SEC. 5. It is the intent of the Legislature that the amendment  
36 of Section 60290 will provide the Water Replenishment District  
37 of Southern California with the ability to determine the appropriate  
38 use of moneys held in its annual reserve fund. Public records that  
39 are kept by the district of expenditures from the annual reserve  
40 fund shall help the Legislature determine whether the flexibility

1 provided by this act should be permanently extended beyond the  
2 2019–20 fiscal year.

3 SEC. 6. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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